IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4268 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R K BHARATIYA

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 4268 of 1999
MR.R.K.BHARATIYA - PARTY IN-PERSON
MS PJ DAVAWALA, Advocate for Respondent No. 1 - Absent
MR RJ OZA, Advocate for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 29/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

1. The petitioner challenges the order dated 14th October 1997 passed by the Central Administrative Tribunal, Ahmedabad in O.A. No. 576 of 1996 and M.C.A. No. 755 of 1997, to the extent that the petitioner is denied the full pay scale of Rs.2,000 to Rs.3,500 of Deputy Accounts Officer with effect from 8-10-1990 to 31-7-1995.

2. According to the petitioner, he joined the respondent No.2 - Corporation on 20th February 1957 and was promoted as Insurance Inspector with effect from 6-7-1972 in the pay scale of Rs.1,640 - Rs.2,900. He worked as an Insurance Inspector upto 7th October 1990. In 1982, he was posted as a Manager Grade - I, which post was borne in the cadre of Deputy Accounts Officer. He had worked on that post from 30-1-1982 to 26-7-1982 and from 2-8-1982 to 20-2-1983, and was paid the pay scale of Manager Grade - I / Deputy Accounts Officer for the said period.

2.1 It is the petitioner's case that the post of Insurance Inspector of the internal audit was upgraded to the post of Deputy Accounts Officer with effect from 1-6-1990 and the post of Audit Inspector was abolished from Audit Party due to re-structuring of the Regional Audit Parties. The said post upgraded as Deputy Accounts Officer as per the order dated 14-5-1990, at Annexure "A" to the petition, was continued from time to time. There was, thus, no post of Audit Inspector but only the post of Deputy Accounts Officer with effect from 1-6-1990 in the pay scale of Rs.2,000 to Rs.3,500. It is contended in paragraph 6 of the petition that the petitioner was posted against a clear / regular vacant post of Deputy Accounts Officer with effect from 8-10-1990 and since then, he had been working as the Head of the Audit Party upto 31-7-1995, being the date on which he retired. According to the petitioner, he continuously discharged the functions and responsibilities of Deputy Accounts Officer for a long period of five years as the Head of the Audit Party. He has relied upon the audit programmes issued by the respondents posting the petitioner as the head of the Audit Party, at Anenxure "B" collectively. On the basis of these orders, it is contended that his posting as Insurance Inspector (Audit) was made against the upgraded post of Deputy Accounts Officer to work as the Head of Audit Team and all posting orders clearly indicated that the Audit Party was being headed by Deputy Accounts Officer in the said period of about five years.

However, he was not paid the higher pay scale of Deputy Accounts officer though he had discharged the functions of that post all throughout. While in service, the petitioner had demanded pay scale of Deputy Accounts Officer, but no response was given to him by the respondents.

2.2 The petitioner, therefore, approached the Tribunal by filing O.A. No. 523 of 1995. The Tribunal, by order dated 6-2-1996, at Anenxure "D" to the petition, directed the petitioner to make a fresh representation to the respondents within four weeks. The petitioner accordingly made a representation on 15-2-1996, contending he had worked as Deputy Accounts Officer from 8-10-1990 to 31-7-1995 and was therefore entitled to the pay and allowances of that post. In the representation, he had contended that the post of Audit Inspector of the internal Audit Party was upgraded to Group "B" Post of Deputy Accounts Officer with effect from 1-6-1990, and that the petitioner was heading the Audit Party during the period from 8-10-1990 to 31-7-1995 and performed the duties of the Deputy Accounts Officer. The representation was, however, rejected by order dated 24-5-1996, in which while holding that the post of Audit Inspector was upgraded to the post of Deputy Accounts Officer with effect from 1-6-1990, it was held that the petitioner was performing the duties of Audit Inspector.

2.3 The petitioner again approached the Tribunal, challenging the said order dated 24-5-1996 by way of O.A. No. 576 of 1996. During the pendency of that application, the petitioner sought a direction from the Tribunal on the respondents to produce certain documents. The Tribunal issued such directions, but the documents were not produced, as stated in paragraph 9 of the petition. It will be seen from the application for production of documents, a copy of which is at Annexure "G" to the petition, that the petitioner had sought for copy of the order dated 14-5-1990 by which the post of Audit Inspector was upgraded to the post of Deputy Accounts Officer; copies of the orders dated 8-8-1990, 6-8-1991, 20-8-1992, 20-11-1993 and 9-12-1994, by which the upgraded post of Deputy Accounts Officer was continued from time to time from 1-7-1990 upto 30-9-1995; orders dated 23-1-1982 and 31-7-1982 by which the applicant was given promotion to the post of Manager Grade I (borne in the same cadre of Dy. Accounts Officer) from 30-1-1982 to 26-7-1982 and from 2-8-1982 to 20-2-1983, copies of the relevant documents / papers in respect of the alleged additional duties of the post of Deputy Accounts Officer. The Tribunal, by its order

dated 22-1-1997, issued directions on the respondents to produce these documents, but they were not produced.

2.4 The respondents contested the petition by filing the affidavit-in-reply in which it is contended that, at the relevant time, the petitioner was working as Insurance Inspector under the set up of the respondent NO.2 - Corporation and was therefore not entitled to the pay of the higher post. The Central Administrative Tribunal, ultimately, directed the authorities to pay the petitioner a special pay of 10% of his pay in the lower post for the said period.

2.5 The Tribunal, while accepting that the petitioner had shouldered higher responsibilities, as contended by him, and that, it was not shown that the there were any additional duties of Deputy Accounts Officer, which he did not discharge, directed special pay of 10% of his pay in lower post to be given to the petitioner for the said period from 8-10-1990 to 31-7-1995 when he had discharged the functions of the Deputy Accounts Officer. That order of the Tribunal was challenged by the respondent No.2 - Corporation in Special Civil Application No. 136 of 1998, and this Court, by order dated 3-3-1998, rejected that petition with a direction that the amount payable under the order should be disbursed to the petitioner within three months. The respondents challenged that decision before the Supreme Court by preferring Special Leave to Appeal (Civil) No. 12652 of 1990 and the Supreme Court, by order dated 17th August 1998, dismissed the S.L.P. on the facts of the case, keeping open the question of law involved in the matter.

3. Thus, while the order awarding 10% of the pay in the lower post passed by the Tribunal to the petitioner has been upheld, the petitioner feeling dissatisfied by that order, has challenged it to the extent that his claim has been disallowed. In other words, the petitioner claims that he should be paid full salary of Deputy Accounts Officer for the said period during which he had discharged the functions of that post on the principle of "equal pay for equal work".

4. It was contended before us by the petitioner, who has argued as party-in-person in absence of his counsel and who did not want to wait for his counsel and wanted to argue the matter himself, that, on the principle of "equal pay for equal work", the petitioner was entitled to be paid the pay of the post of Deputy Accounts Officer for the said period from 8-10-1990 to 31-7-1995, during which he continuously discharged the functions of that

post. He submitted that the Tribunal had committed an error in denying such benefits to the petitioner after having rightly held that the petitioner did discharge the functions of that post during the said period. He argued that there was no post of Audit Inspector, because, the posts of Audit Inspectors were upgraded to the post of Deputy Accounts Officers and therefore, his posting as an Audit Inspector under the order dated 20-9-1990 should be treated as against the said upgraded post of the Deputy Accounts Officer. It was submitted that even if he was not promoted to the said post, he was entitled to the pay of that post in view of his posting as Insurance Inspector (Audit), which post stood upgraded as Deputy Accounts Officer. He submitted that, admittedly there was no post of Audit Inspector in view of the said upgradation and therefore, his posting as Audit Inspector should be treated as posting in the upgraded post. He also relied upon Fundamental Rule 49 for claiming the pay of the higher post in which he worked for five years.

5. The learned counsel appearing for the respondent No.2 submitted that the petitioner was not entitled to the salary of the higher post of Deputy Accounts Officer, because, he was never appointed to that post. Moreover, there were several responsibilities attached to the post of Deputy Accounts Officer, which the petitioner did not discharge and therefore, it cannot be said that the petitioner had discharged all duties, functions and responsibilities of the Deputy Accounts Officer. It was also contended that the benefit of any such higher pay was not permissible to the petitioner under the Rules. He submitted that Fundamental Rule 49(1) contemplated a formal appointment to hold full charge of the duties of the higher post and in the present case, there was no such formal order made. He submitted that the Director General alone could have made appointment to the post of Deputy Accounts Officer and even an order placing any Audit Inspector in charge of the post of Deputy Accounts Officer could have been passed only by the Director General. In absence of any such formal order, the petitioner cannot claim the benefit of the pay admissible for the said higher post. He also submitted that such higher pay was admissible only when the charge of the duties of a higher post is held in addition to the ordinary duties of the employee. He further contended that even the post of Deputy Accounts Officer was in the same office and in the same line of promotion and therefore, the petitioner was not entitled to the benefit of Clause (3) of Fundamental Rule 49. Thus, according to the learned counsel, the petitioner was not entitled to the benefit of Fundamental Rule No.49(1) or 49(3) of the

Rules and there was no other rule under which he could have been awarded even 10% by way of special pay. He, however, submitted that since that part of the order has been confirmed upto the Supreme Court, he is not in a position to raise any objection against the same.

6. There is no dispute about the fact that the posts of Audit Inspectors were upgraded to the post of Deputy Accounts Officer. In other words, there remained no post of Audit Inspector after such upgradation which was done as per the order dated 14th may 1990, a copy of which is at Annexure "A" to the petition. After the said upgradation, the petitioner was initially taken out from the Regional Audit Party and posted as an ordinary Inspector, but by order dated 20-9-1990, he was posted as Audit Inspector and he worked in the Audit Party from 8-10-1990 to 31-7-1995 i.e. till he retired. His posting as an Audit Inspector by virtue of his belonging to the cadre of Inspector, in the Regional Audit Party has to be regarded as a posting against the upgraded post of Deputy Accounts Officer, because, there was no post of Audit Inspector any more in the Regional Audit Party after the said upgradation of all the posts of Audit Inspector to the posts of Deputy Accounts Officer, as per the order dated May 14, 1990.

7. The Director General, who had initially rejected the petitioner's claim for remuneration for the post of Deputy Accounts Officer, in his order dated 24-5-1996, a copy of which is at Annexure "F" to the petition, in terms found: "The post of Audit Inspectors of the internal Audit Parties were upgraded to Group "B" posts of Dy. Accounts Officers with effect from 1-6-1990." He also found: "In Gujarat region also, during the period 8-10-1990 to 31-7-1995, out of four sanctioned posts of Dy. Accounts Officers, two posts remained vacant and were manned by Audit Inspectors. Shri Bharatiya (i.e. petitioner) was heading one such Audit Party during the period 8-10-1990 to 31-7-1995". It was however held that, during the said period, he had performed duties of Audit Inspector and did not performed the duties of Deputy Accounts Officer heading the Audit Parties, namely, of inspection of local officers, settlement of audit paras and physical verification of cash balances. It is on this ground that the Director General rejected his claim for higher remuneration. It is, however, clear from the order of the Director General that the petitioner had manned the post of Deputy Accounts Officer after he was posted as Audit Inspector in the Regional Audit Party under the order dated 20-9-1990. The very basis of the order of the Director general that there

were additional duties to be performed by the Deputy Accounts Officer was upset by the Tribunal in paragraph 5 of the impugned order, in which it was held that: "We find some merit in the applicant's argument that what was called additional functions as listed in the impugned order were not generally within the purview of the Deputy Accounts Officer and there is also nothing to rebut his contention that the other Deputy Accounts Officers did not perform these additional functions."

8. Despite the direction of the Tribunal for producing the documents to show that such additional functions were required to be performed, as were assumed in the Director's order, the respondents did not produce the relevant documents. The Tribunal, therefore, rightly held that the petitioner was asked to shoulder the higher responsibilities over and above what he would have normally been entrusted with in the lower post. There was no post of Audit Inspector any more in the Regional Audit Party in view of the upgradation of the posts of Audit Inspectors and the same functions were to be discharged by the Deputy Accounts Officer. It cannot be said that when those very functions came to be discharged by the petitioner, they should be treated as functions not of the Deputy Accounts Officer, but of an Audit Inspector. An ordinary Inspector, who was not in the Audit Party, was not required to perform such functions any more by virtue of the upgradation of the posts of Inspectors in the Regional Audit Parties and those functions were now dischargeable only by the Deputy Accounts Officers. Therefore, when the petitioner was appointed as Audit Inspector for the purpose of discharging the functions which were to be discharged by the Deputy Accounts Officer by virtue of the upgradation of the posts of Audit Inspectors, the petitioner could not have been denied the remuneration of that higher post by adopting a circuitous manner of posting him as Audit Inspector with a view to man the post of Deputy Accounts Officer without clearly mentioning that he was to be in charge of the post of Deputy Accounts Officer. However, the posting order of the petitioner in reality put him in charge of the functions, which were dischargeable by the Deputy Accounts Officer, entitling him to the remuneration of that higher post even under the fundamental Rule 49.1.

9. The Tribunal, however, denied the full benefit to the petitioner and awarded special pay of only 10% of the lower post by accepting the submission made on behalf of the respondents that the petitioner was asked to head the local Audit Parties by the local officers and the Deputy

Accounts Officer cadre was an All India Cadre promotion to which was to be done after following the prescribed procedure laid down for screening. There was no question of any promotion involved in the matter and his seniority position for promotion to the All India Cadre, was hardly of any relevance while considering the question as to whether the petitioner was entitled to pay permissible for the higher post during the period that he worked in that post. Even the Director General, in his order, had clearly stated that one of the upgraded post of the Deputy Accounts Officer, which had fallen vacant, was manned by the petitioner during the said period. Therefore, the non-promotion of the petitioner to the said post could not have been made a ground for denying him the benefit of the pay permissible to him for working in the said higher post for the period during which he discharged the functions of that post, though appointed as Audit Inspector, which post was at that time upgraded as Deputy Accounts Officer.

10. The petitioner has, therefore, made out a case for giving him remuneration of the post of Deputy Accounts Officer for the said period, during which he was entrusted with the functions of that post by appointing him as an Audit Inspector in the Regional Audit Party in which the post of Audit Inspector was upgraded to the post of Deputy Accounts Officer. In this view of the matter, we hold that the petitioner is entitled to the pay admissible for the said higher post of Deputy Accounts Officer for the period from 8-10-1990 to 31-7-1995, during which he discharged the functions of that post. The impugned order of the Tribunal, to the extent that it is challenged in the present petition, is hereby set aside. We direct the respondents to calculate the amount of difference for the said period from 8-10-1990 to 31-7-1995 on the footing that the pay of the said higher post of Deputy Accounts Officer was payable to the petitioner. The difference so calculated will be paid to the petitioner within two months from the date of the receipt of the writ of this order. It is made clear that the amount of 10% paid under the order of the Tribunal will be adjusted towards such dues. Rule is made absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

[D.H.WAGHELA, J.]

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